

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, No: 1:15cr183

vs.

MICHAEL AHO KENNEDY,

Defendant.

Before:

THE HONORABLE RAY KENT
U.S. Magistrate Judge
Grand Rapids, Michigan
November 30, 2015
Plea Proceedings

APPEARANCES:

MR. PATRICK MILES, U.S. ATTORNEY

By: MR. RONALD M. STELLA

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PO Box 208

Grand Rapids, MI 49501

616-456-2404

On behalf of the Plaintiff;

FEDERAL PUBLIC DEFENDER

By: MR. RICHARD D. STROBA

50 Louis Street NW

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On behalf of the Defendant.

TRANSCRIBED BY: MS. KATHY J. ANDERSON, RPR, FCRR

November 30, 2015

PROCEEDINGS, 2:56 p.m.

THE COURT: This is the court's case number 15cr183, United States versus Michael Aho.

THE DEFENDANT: Aho, yes.

THE COURT: Michael Aho Kennedy. Mr. Stella appears on behalf of the government. Mr. Stroba appears on behalf of Mr. Kennedy. We're here today because Mr. Stroba has notified the court that Mr. Kennedy wishes to change his plea from not guilty to guilty. Is that right, Mr. Stroba?

MR. STROBA: That's correct, Your Honor.

THE COURT: And is that -- do you also agree with that, Mr. Kennedy?

THE DEFENDANT: I do, Your Honor.

THE COURT: Mr. Kennedy, you have a number of rights. I'm going to go through some of them with you now. First and foremost, as you sit here right now you still have the right to remain silent. You don't have to say anything to me about what you're accused of, you don't have to say anything to Mr. Stella, you don't have to say anything to any member of law enforcement. But if you do say anything to anybody other than Mr. Stroba, what you say can be used against you. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And in fact, if we go forward here today

1 with your desire to change your plea from not guilty to guilty,
2 I'm going to be asking you questions about what you did and you
3 will have to waive your right to remain silent. Do you
4 understand?

5 THE DEFENDANT: Yes.

6 THE COURT: As you sit here right now, you also still
7 have the right to persist in your plea of not guilty. You are
8 presumed innocent of all the charges against you. The
9 government through Mr. Stella has the burden of proving you
10 guilty on each charge beyond a reasonable doubt. You still
11 have the right to a speedy and public trial by a jury with the
12 assistance of Mr. Stroba. At that trial you would have the
13 right through Mr. Stroba to question or cross-examine any
14 witnesses that Mr. Stella might call on behalf of the United
15 States; you would have the right to call your own witnesses and
16 have the court issue subpoenas or court orders that they appear
17 and testify; you would have the right to present other evidence
18 that you believe demonstrates that you're not guilty of the
19 charges against you; you yourself would have the right to
20 testify at that trial, or if you chose to, to remain silent and
21 not have your silence used against you in any way. Do you
22 understand all of those rights?

23 THE DEFENDANT: I do.

24 THE COURT: You do have the right to a lawyer. You
25 have been and remain free to hire your own lawyer, however, you

1 asked the court to appoint a lawyer and I appointed or one of
2 my colleagues appointed Mr. Stroba. He is a very experienced
3 criminal defense lawyer in this district and does exclusively
4 federal criminal defense work. Have you been satisfied thus
5 far with the representation that Mr. Stroba has provided you?

6 THE DEFENDANT: I have.

7 THE COURT: Now, if you in fact you go forward and
8 plead guilty here this afternoon, there will be no trial of any
9 kind. Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: And you essentially will be giving up your
12 right to a trial and all the rights that I just talked about
13 that would occur in connection with the trial, but the one
14 right that you don't give up is your right to counsel. Do you
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: So Mr. Stroba will be with you to the end
18 of this case whether it's the result of a guilty plea you
19 tender here this afternoon, whether it's the result of a trial,
20 whether the case ends here in the Western District of Michigan,
21 or in some court of appeals somewhere. Do you understand that?

22 THE DEFENDANT: I do.

23 THE COURT: All right. In order to go forward with
24 your plea, I'm going to be asking you some questions, and in
25 order to do that I'm going to have my courtroom deputy,

1 Jennifer, place you under oath here in a moment. But you need
2 to understand that once you've been given the oath and sworn to
3 tell the truth, if you were to answer any of my questions
4 falsely here this afternoon, you would be subject to the
5 penalties of perjury and/or making a false statement, which are
6 separate crimes carrying their own penalties and own prison
7 terms. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Jennifer.

10 MICHAEL AHO KENNEDY, DEFENDANT, WAS DULY SWORN

11 THE COURT: Mr. Kennedy, how far did you get in
12 school?

13 THE DEFENDANT: Post graduate I think it's called,
14 went to law school.

15 THE COURT: Okay. Let's start with high school.
16 Where did you go to high school?

17 THE DEFENDANT: Petoskey, Michigan.

18 THE COURT: And did you graduate from high school
19 there?

20 THE DEFENDANT: Yes.

21 THE COURT: And then you went on to college?

22 THE DEFENDANT: Michigan State University.

23 THE COURT: Okay. What year did you graduate from
24 Michigan State?

25 THE DEFENDANT: I think '71.

1 THE COURT: Probably shouldn't make editorial
2 comments, but it's a great time to be a Spartan, isn't it?

3 THE DEFENDANT: It is, Your Honor, thank you.

4 THE COURT: I agree a hundred percent.

5 And then where did you attend law school?

6 THE DEFENDANT: Wayne State University.

7 THE COURT: And did you graduate from Wayne?

8 THE DEFENDANT: Yes.

9 THE COURT: What year was that?

10 THE DEFENDANT: That would have been '74, I think.

11 THE COURT: We followed the same college and law
12 school trajectory, also a Tartar.

13 THE DEFENDANT: Oh.

14 THE COURT: As you sit here today, are you suffering
15 from any physical or mental condition that would make it
16 difficult for you to understand what's happening in court?

17 THE DEFENDANT: No.

18 THE COURT: In the last 24 hours have you had any
19 drugs, alcohol, or medication that would impair your ability to
20 follow the proceedings?

21 THE DEFENDANT: No.

22 THE COURT: Mr. Kennedy, it's important that you
23 understand that you have the right to have this hearing or
24 change of plea hearing conducted in front of Judge Neff. Judge
25 Neff is the Article III judge appointed by President Bush. She

1 is assigned to be the trial judge in your case, and she is the
2 judge who will ultimately sentence you if you're convicted.

3 Judge Neff's appointment by the President is a
4 lifetime appointment so she will be a federal judge as long,
5 essentially as long as she is able to or desires to continue.
6 I am not. I'm a magistrate judge. I'm not appointed by a
7 President. I was appointed by the judges of the court. I
8 serve an eight-year term. My duty essentially is to assist
9 them in discharging their responsibilities. Do you understand
10 the distinction?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. And do you consent to having me
13 handle this hearing today? If I do, let me just say what will
14 happen. Because I can't find you guilty. And I can't
15 accept -- I understand there is a written plea agreement which
16 I have reviewed, but I can't accept the plea agreement or find
17 you guilty. But what I can do with your consent is ask you the
18 questions Judge Neff would ask, advise you of the rights she
19 would as she would if she were here, and then after the hearing
20 prepare a written report to her about what happens in court
21 today, and a recommendation about whether she should accept
22 your plea. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And understanding those things, do you
25 consent to me handling the hearing?

1 THE DEFENDANT: Yes.

2 THE COURT: My courtroom deputy has projected on the
3 screen a copy of a consent form. Does that bear your
4 signature?

5 THE DEFENDANT: It does.

6 THE COURT: Did you read and understand that consent
7 to proceed before me before you signed it?

8 THE DEFENDANT: Yes.

9 THE COURT: I believe your consent to proceed here is
10 a free will act by you, and informed, and we will move forward.

11 It's my understanding, Mr. Kennedy, that the
12 government has charged you in the indictment with a number of
13 crimes. Counts 1 through 6 pertain to mail fraud. Count 7, 8,
14 9 relate to the filing of a false amended income tax return,
15 and then there are forfeiture allegations also contained within
16 the indictment. Have you had the opportunity to review those
17 charges and discuss them with Mr. Stroba?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you believe you understand the charges
20 in each of the counts against you?

21 THE DEFENDANT: Yes.

22 THE COURT: And the forfeiture allegation?

23 THE DEFENDANT: Yes.

24 THE COURT: So my understanding is that here today
25 you'll be pleading guilty to only two of those counts, and that

1 would be Count 6, one of the mail fraud counts, and Count 8,
2 one of the making and subscribing to a false amended U.S.
3 income tax return count. Is that your understanding?

4 THE DEFENDANT: Yes.

5 THE COURT: There are certain maximum penalties that
6 apply if you are convicted of those counts. On Count 6, the
7 mail fraud count, the maximum penalty is not more than 20 years
8 and/or a \$250,000 fine, special assessment of a hundred
9 dollars, mandatory restitution meaning the law requires Judge
10 Neff to order you to pay restitution of any amounts the
11 government proves you have stolen, and then finally, a period
12 of supervised release of not more than three years. Supervised
13 release is a period of time following any prison term you might
14 serve during which you're under the court's supervision and
15 subject to conditions imposed by Judge Neff.

16 And first and foremost among those conditions would be
17 that you not commit a new crime. And there are consequences
18 for violating supervised release. So I'm going to give you an
19 example. If Judge Neff were to impose the maximum three years
20 of supervised release, and during supervision you committed
21 some violation of your supervised release, she could revoke
22 your supervision and order you to go back to prison for up to
23 the entire term of supervised release, under my example of
24 three years. So do you understand how supervised release
25 works?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you believe you understand the maximum
3 penalties then that attach to Count 6?

4 THE DEFENDANT: I do.

5 THE COURT: All right. Count 8, the false amended tax
6 return count, carries a maximum prison term of three years,
7 and/or a \$250,000 fine, a period of supervised release of not
8 more than one year, a mandatory special assessment or court
9 costs of a hundred dollars, and also provides for restitution.
10 Mr. Stella, is the restitution under Count 8 mandatory or
11 discretionary?

12 MR. STELLA: Discretionary, Your Honor.

13 THE COURT: All right. Mr. Kennedy, do you understand
14 the difference?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. So even though you said yes I'm
17 still going to explain it very briefly. You know, mandatory
18 restitution, which is required in Count 6, Judge Neff has no
19 alternative; if she finds money was stolen, she must order you
20 to pay it. In Count 8, if she finds money was stolen, she may
21 but doesn't have to order you to pay. So that's the
22 difference. Understand?

23 THE DEFENDANT: I do. Thank you.

24 THE COURT: Mr. Stella, can you please explain to
25 Mr. Kennedy the elements for each of Counts 6 and 8?

1 MR. STELLA: Yes, Your Honor. With respect to
2 Count 6, the mail theft, the mail fraud count, the elements
3 would be that the defendant knowingly devised a scheme to
4 defraud in order to obtain money or property; that the scheme
5 included a material misrepresentation or a concealment of a
6 material fact; that the defendant had intended to defraud,
7 meaning he intended to bring about gain to himself or cause a
8 financial loss to another; and then finally in executing the
9 scheme that the defendant deposited or caused another to
10 deposit an item to be sent or delivered by the United States
11 Postal Service.

12 THE COURT: If I can have you stop right there for a
13 moment, Mr. Stella.

14 MR. STELLA: Sure.

15 THE COURT: Mr. Kennedy, do you believe you understand
16 the elements of Count 6?

17 THE DEFENDANT: I do, Your Honor.

18 THE COURT: Mr. Stella.

19 MR. STELLA: And with respect to the filing of the
20 false tax return, that the defendant signed an income tax
21 return that contained a written declaration that it was made
22 under penalty of perjury; that the income tax return contained
23 a false statement; that the defendant knew the statement was
24 false; that the false statement was material; and that the
25 defendant made the false statement willfully, that is, with

1 intent to violate a known legal duty.

2 THE COURT: Thank you, Mr. Stella. Mr. Kennedy, do
3 you understand the elements of the charge?

4 THE DEFENDANT: I do.

5 THE COURT: Mr. Stella, briefly, and I guess this is
6 really touched upon in the plea agreement, but I just would ask
7 you to briefly inventory for Mr. Kennedy what evidence you
8 would produce at trial if in fact he decided, he changed his
9 mind and said I don't want to --

10 MR. STELLA: Sure. Your Honor, with respect to the
11 mail fraud scheme, the government would offer evidence that
12 Mr. Kennedy became the trustee in 2006 of an elderly client of
13 his, initials V.W., and that he had a duty, a fiduciary duty to
14 manage her money. Pretty quickly after becoming her trustee,
15 he began to take money that he was not entitled to, either as a
16 legitimate fee for his trustee services, his legal services as
17 her trustee, or to meet her monthly personal and living
18 expenses. And instead what he did was repeatedly go to her
19 bank, withdraw large sums of money from her investments,
20 deposit it into his law firm's interest only account, and then
21 would withdraw from that account and into his business account
22 more than was necessary to meet his trustee fees or her living
23 expenses. And that money in turn was spent on his own personal
24 expenses, his business expenses, or to meet her monthly
25 expenses.

1 The mails were used, Your Honor, because he would send
2 a false monthly statement to her each month indicating that the
3 balance of the trust account was actually more than it was. He
4 was continuing each month to diminish the amount of the
5 principal in the trust but yet he sent a statement showing that
6 amount the principal was staying relatively stable and in fact
7 was earning interest. That was all false.

8 By 2010, he had pretty much used all of her money,
9 stolen all of her money. And at that point pitched another
10 scheme to a different elderly client, someone with initials
11 J.D., telling her that he could invest her money into the
12 Hampton Funds which he claimed was an investment fund that he
13 ran. In reality, it wasn't. That he took her money,
14 immediately used it to help meet the monthly expenses that he
15 could no longer meet for victim V.W., and then used up a good
16 portion of her money before this all came to light.

17 So that is the facts that the government would show
18 for the mail fraud.

19 THE COURT: All right. And then with regard to the
20 false tax returns.

21 MR. STELLA: Yes, Your Honor. With respect to the tax
22 returns, in 2007, 2008 and 2009, the defendant reported all of
23 the stolen income from the victim, V.W., on his tax return.
24 The first year he was able to pay a very large tax bill,
25 \$111,000 by using the victim's money. But by 2008 and 2009,

1 it's the government's position that he had diminished her funds
2 so quickly that he was no longer able to pay the very large tax
3 bills that were around 80 or \$90,000 for each of those years.
4 When the IRS came knocking to ask why he wasn't paying his 2008
5 and 2009 tax obligations, the defendant made a comment to the
6 IRS that he had had an epiphany; he realized that -- and he
7 realized that really was not income that was on his return, but
8 it was loans or working capital that he was entitled to take.
9 And so he amended his tax returns to remove that money as
10 income and then sought refunds from the government.

11 Those tax returns were false because the money truly
12 was income as indicated in the original returns. He signed the
13 false statement and the return under penalty of perjury and
14 filed it with the IRS.

15 THE COURT: Thank you, Mr. Stella. Mr. Kennedy, do
16 you understand the evidence that the government would offer
17 against you?

18 THE DEFENDANT: I do.

19 THE COURT: Mr. Kennedy, if in fact you're convicted
20 of Counts 6 and 8 or any other counts in this matter if you
21 went to trial, for example, there are certain sentencing
22 guidelines that would apply to your case. These guidelines
23 were adopted as part of the Sentencing Reform Act of 1984.
24 Have you and Mr. Stroba discussed those?

25 THE DEFENDANT: Yes, we have.

1 THE COURT: And how they might apply to you, both if
2 you were to go to trial and lose, or if you were to in fact go
3 forward with your guilty plea?

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Kennedy, it's important that you
6 understand that Judge Neff will not be able to determine what
7 the advisory guideline range applicable to your case is until
8 after there's been a presentence investigation, the preparation
9 of a presentence report, and both Mr. Stella on behalf of the
10 government and Mr. Stroba on your behalf are given an
11 opportunity to comment on it. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Stella, does the government retain its
14 right to appeal under the terms of the plea agreement?

15 MR. STELLA: Yes, Your Honor.

16 THE COURT: All right. Mr. Kennedy, the government
17 almost never -- in my experience, both as a lawyer and judge,
18 never surrenders its right to appeal a sentence. And they
19 haven't done so in your case. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that in the federal
22 system parole has been abolished. If you're sent to prison you
23 will not be released on parole?

24 THE DEFENDANT: Yes.

25 THE COURT: There is a concept called good time

1 credit; if you receive a prison sentence some inmates earn time
2 off of their sentence by essentially following the rules,
3 staying out of trouble, and being productive while they are in
4 custody. Have you discussed that issue with Mr. Stroba?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand, Mr. Kennedy, that if
7 the sentence Judge Neff ultimately imposes upon you is more
8 severe than you expect, that you will not be allowed to
9 withdraw your guilty plea and in fact will remain bound by it?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you believe now that you understand the
12 nature of the charges against you, the maximum penalties that
13 could be imposed upon you, and your constitutional rights?

14 THE DEFENDANT: Yes.

15 THE COURT: Understanding all of those things, how do
16 you plead to the charges against you contained in Count 6 and 8
17 of the indictment?

18 THE DEFENDANT: Guilty, Your Honor.

19 THE COURT: Guilty as to both counts?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Kennedy, is your decision to plead
22 guilty the result of any force, threats, or coercion?

23 THE DEFENDANT: No.

24 THE COURT: Is your decision to plead guilty the
25 result of any promises made to you by anyone that are not

1 contained within the plea agreement?

2 THE DEFENDANT: No.

3 THE COURT: Is your decision to plead guilty a free
4 will and voluntary act by you?

5 THE DEFENDANT: Absolutely.

6 THE COURT: Does your decision to plead guilty result
7 at least in part from plea discussions that took place between
8 your attorney and the government culminating in the written
9 plea agreement?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you had the opportunity to read and
12 review the entire written plea agreement with Mr. Stroba?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you had a chance to ask him any
15 questions that you have about the plea agreement?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Mr. Kennedy, we're going to go
18 through the plea agreement now. It's fairly lengthy. I'm
19 going to start by asking Mr. Stella, I'm going to start by
20 asking Mr. Stella to summarize what the government believes are
21 the important terms of the plea agreement. And then we will
22 give Mr. Stroba an opportunity to add anything that he may
23 wish, and you an opportunity. Mr. Stella.

24 MR. STELLA: Thank you, Your Honor. From the
25 government's perspective, I would say that what the plea

1 agreement is doing is it's giving the defendant the right to
2 plead guilty to just two of the counts in the indictment as the
3 Court has covered 6 and 8. In exchange for that, the
4 government has agreed to leave some limited rights for the
5 defendant in terms of challenging any sentence on appeal.

6 There is mandatory restitution for the mail fraud
7 count, as the Court has indicated. Discretionary restitution
8 with respect to the tax counts. There is an asset forfeiture
9 provision. I don't know how much detail the Court wants on
10 that. But the gist of the asset forfeiture provision is that
11 the defendant will have a money judgment against him for an
12 amount equal to or the amount of the restitution that is
13 ordered with respect to the mail fraud count.

14 That judgment in terms of any payment against the
15 restitution the government will suggest to the Department of
16 Justice and ask for authority to apply that against the
17 restitution but that does not necessarily have to happen.
18 There is the chance here the defendant would be exposed to both
19 the restitution amount and the money judgment amount.

20 THE COURT: I notice there was something in the plea
21 agreement about a house in Petoskey.

22 MR. STELLA: Yes, Your Honor.

23 THE COURT: Put on the record and explain to me what
24 the situation is with that.

25 MR. STELLA: So the government is asserting its asset

1 forfeiture rights with respect to the house because the
2 defendant has agreed that money from the fraud, from the
3 embezzlement and the mail fraud was used to pay for the house.
4 The house has a \$67,000 equity in it, according to the
5 government's calculations, and so what we are doing is if the
6 defendant pleads guilty and his plea is accepted by Judge Neff,
7 there will be an immediate judgment for that \$67,000 at that
8 point. And then if the defendant can satisfy that \$67,000 by
9 tendering money to the government at least 28 days before the
10 sentencing, the government will agree to relinquish the house
11 from the forfeiture rights that the government has in exchange
12 for that money, and a judgment will enter for the remaining
13 balance of the restitution minus that 67,000. It gives the
14 defendant an opportunity to retain the home. I understand his
15 adult son is living in it now. He wants to remain in that
16 home. The government is only entitled to the equity interest,
17 and that's why that provision is in there. If he can't meet
18 it, we will enter the judgment for the full amount.

19 THE COURT: So the money doesn't actually have to come
20 from Mr. Kennedy.

21 MR. STELLA: No, Your Honor.

22 THE COURT: I don't know what's going on in the
23 background here. But hypothetically, the son could choose to
24 pay the 67,000.

25 MR. STELLA: Correct, Your Honor. The key is the

1 tendering of \$67,000 to the government 28 days before the
2 sentencing.

3 THE COURT: All right. Fair enough.

4 MR. STELLA: The tax count, Your Honor, has other
5 provisions in them. I think in summary, they require the
6 defendant to cooperate with the IRS and in all respects, not
7 just with respect to any restitution that's ordered in the
8 criminal case, but to sign forms and provide information to
9 allow his civil, the civil penalties that might follow from his
10 false tax returns as well to be adjudicated. And I think that
11 summarizes the key provisions from the government's
12 perspective.

13 THE COURT: All right. Mr. Stroba, anything you would
14 add?

15 MR. STROBA: Just this, Your Honor. This is perhaps
16 the third version of the plea agreement that we've had a chance
17 to go over. I have gone over each version with Mr. Kennedy.
18 Even this last version had a couple of changes that needed to
19 be made before we could finally sign it and present it to the
20 court. I believe during that time period Mr. Kennedy has had
21 the plea agreement in his hands, a version of the plea
22 agreement in his hand for quite sometime. So I believe he's
23 had a full opportunity to review both the plea agreement terms
24 as well as the factual basis provided in paragraph 7 on page 8,
25 I believe it is, to satisfy the court that a factual basis

1 exists. And more importantly, that he understands all of the
2 terms.

3 The Court's question about the house, Mr. Stella and I
4 have had several opportunities to discuss that, and as the
5 Court might imagine, Mr. Kennedy is not in a position to come
6 up with that money, but if in fact there is some way, there's
7 also a lien from a bank on it that virtually takes up all the
8 rest of the equity that may exist. So there will have to be a
9 lot of negotiation done probably by somebody else. Thank you.

10 THE COURT: All right. Mr. Kennedy, I do want to turn
11 your attention to the factual basis set out in paragraph 7
12 beginning on page 8. Have you read that?

13 THE DEFENDANT: I have.

14 THE COURT: I'm going to start rather than with you
15 with Mr. Stella. Mr. Stella, does the government believe that
16 the factual basis of guilt set forth in paragraph 7 is
17 accurate?

18 MR. STELLA: Yes, Your Honor.

19 THE COURT: Mr. Stroba, do you believe it's accurate?

20 MR. STROBA: I do, Your Honor.

21 THE COURT: Okay. Mr. Kennedy, do you believe it's
22 accurate?

23 THE DEFENDANT: I do.

24 THE COURT: Do you agree with everything set forth in
25 paragraph 7, Mr. Kennedy?

1 THE DEFENDANT: Yes.

2 THE COURT: Well, it certainly is a detailed account
3 of what happened here. And even though your lawyer and the
4 U.S. Attorney' office have agreed and you have agreed to
5 stipulate to those facts, I would like you to tell me in your
6 own words what it is that you did that you think makes you
7 guilty.

8 THE DEFENDANT: Would you like me to stand?

9 THE COURT: You don't have to stand.

10 THE DEFENDANT: Okay. Well, as the plea agreement
11 states, I had a very nice client who I understand has passed
12 away, and I became a successor trustee for her trust. And
13 during the course of time I withdrew the money from the
14 account, it was under the trust's name, and would deposit it in
15 my IOLTA account. And then from that IOLTA account I would
16 periodically pay it out. And the two principal payees were for
17 V.W. to cover her expenses as they came due, because as trustee
18 I would pay for her expenses, and then unfortunately, and I
19 regret, I took money and paid myself for various things,
20 including trustee fees, including payments on the house, and
21 for other instruments and activities. Again, I regret that.

22 Then for J.D., she had an account, much smaller
23 account, and I cashed those CDs in. And I had a Power of
24 Attorney over those, as I recall. And then paid those expenses
25 for J.D. again, for the client, and then for my own personal

1 expenses.

2 And I understand, and I agree, and I apologize, and I
3 regret that I did not understand that as fiduciary I cannot pay
4 any moneys to myself. And that is the gist of it, and the --
5 the plea agreement accurately reflects more detail about it.

6 THE COURT: Mr. Kennedy, I just want to clarify one
7 thing you said. And that is, I mean you understood as a
8 lawyer, as a lawyer who has evidently some experience in trust
9 law, that you were prohibited by law from taking money out of
10 the trust for your own purposes.

11 THE DEFENDANT: Well --

12 THE COURT: I mean are you, are you saying -- I just
13 want to be clear. Let me ask you a different question. Leave
14 that question aside for now.

15 You're not suggesting that you took money out of that
16 trust account and spent it on yourself in the mistaken belief
17 that it was okay to do that, are you?

18 THE DEFENDANT: No.

19 THE COURT: You knew it was wrong?

20 THE DEFENDANT: Yes.

21 THE COURT: You knew it was wrong while you were doing
22 it?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. And these actions took place
25 in the Western District of Michigan?

1 THE DEFENDANT: Yes, in Petoskey, Michigan.

2 THE COURT: And they took place in the time period
3 between July of 2006 and March of 2012?

4 THE DEFENDANT: Yes.

5 THE COURT: And as part of these activities, you would
6 mail statements concerning V.W.'s trust account to her and
7 later to family members?

8 THE DEFENDANT: Yes.

9 THE COURT: And you would do that through the U.S.
10 mail?

11 THE DEFENDANT: Yes. And I neglected to mention that
12 in my verbal essay.

13 THE COURT: No problem. And then you amended your tax
14 return for the year 2009, is that right?

15 THE DEFENDANT: Yes.

16 THE COURT: And in the amendment, you made statements
17 that you knew were untrue?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Mr. Stella, anything the
20 government would ask for by way of additional factual basis for
21 the plea?

22 MR. STELLA: Just very briefly, Your Honor.
23 Mr. Kennedy, when you mailed the statements out, those
24 statements that went to V.W. were false, correct?

25 THE DEFENDANT: Yes.

1 MR. STELLA: It did not state a true balance of her
2 trust account?

3 THE DEFENDANT: No.

4 MR. STELLA: In fact, you didn't share the full
5 information with your secretary who prepared those, is that
6 correct?

7 THE DEFENDANT: Yes.

8 MR. STELLA: You had the true statements of account
9 knowing the balance was reducing because of your embezzlement,
10 but your secretary started from a number she thought was the
11 same every month and maybe even growing, correct?

12 THE DEFENDANT: Yes.

13 MR. STELLA: And you knew that when you had those
14 mailed out by her?

15 THE DEFENDANT: Yes.

16 MR. STELLA: And the victims here, V.W., would it
17 surprise you that she was 81 years old in 2016 when you first
18 became her trustee?

19 THE DEFENDANT: No. I knew she was aged.

20 MR. STELLA: And J.D., victim J.D., did you know she
21 was 97 years old in 2010?

22 THE DEFENDANT: Yes.

23 MR. STELLA: And the personal expenses, I just want to
24 pick up on what the Court was saying. I mean you know you
25 weren't authorized to pay money on personal expenses. Did you

1 spend some of this money on vacations with your family?

2 THE DEFENDANT: Yes, I did.

3 MR. STELLA: And a horse for your daughter?

4 THE DEFENDANT: Yes.

5 MR. STELLA: And many luxury items?

6 THE DEFENDANT: Many items, yes.

7 MR. STELLA: Okay. That's all, Your Honor. Thank
8 you.

9 THE COURT: Thank you, Mr. Stella. Mr. Stroba,
10 anything further from you, sir?

11 MR. STROBA: No, Your Honor, I believe the factual
12 basis has been established as to both Counts 6 and 8.

13 THE COURT: Mr. Kennedy, in addition to we talked
14 about paragraph 7, factual basis count of the plea agreement.
15 Have you read the entire plea agreement?

16 THE DEFENDANT: I have.

17 THE COURT: And have you had ample opportunity to
18 discuss every part of it with Mr. Stroba?

19 THE DEFENDANT: Yes.

20 THE COURT: Have you asked him every question that you
21 had about the plea agreement?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand each and every part of
24 the plea agreement?

25 THE DEFENDANT: Yes.

1 THE COURT: Mr. Stella, were you going to say
2 something?

3 MR. STELLA: I was, Your Honor, but not until I knew
4 you were completed.

5 THE COURT: All right. Good time to say whatever you
6 have in mind.

7 MR. STELLA: Well, I just, Your Honor, I'm sorry, I
8 just wondered if we covered specifically the waiver of appeal.
9 I know it was mentioned but I don't know if we talked about the
10 acceptance or if we even need to.

11 THE COURT: We should. Absolutely.

12 MR. STROBA: Page 13, Your Honor.

13 THE COURT: Thank you, Mr. Stroba. Mr. Kennedy, we
14 talked earlier about the fact that the government is not giving
15 up its right to appeal your sentence. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: On the other hand, you are giving up some
18 of your appeal rights --

19 THE DEFENDANT: Yes.

20 THE COURT: -- in addition to the trial rights we
21 already talked about. Your waiver of your right to appeal is,
22 however, not absolute, it's subject to certain exceptions, and
23 those would include if you're sentenced on any count of
24 conviction exceeding the statutory maximum sentence for that
25 count, you can appeal; if your sentence was based upon an

1 unconstitutional factor such as race, religion, national origin
2 or gender, you can appeal; if you believe that the district
3 court, Judge Neff in this case, incorrectly determines your
4 sentencing guideline range, and you and/or Mr. Stroba object to
5 that at or before the sentencing hearing, you can appeal that;
6 if your sentence is above the guideline range determined by
7 Judge Neff, and is unreasonable, you can appeal; if your plea
8 as opposed to a sentence, if your plea itself was involuntary
9 or unknowing, you can appeal; or if Mr. Stroba has provided
10 ineffective assistance to you during the negotiation and entry
11 of your plea you can appeal. But other than those six reasons
12 you're giving up your right to appeal. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: You should also understand that Judge Neff
15 is not a party to this agreement and is under no obligation to
16 accept any recommendation made by the parties; that if Judge
17 Neff ignores any such recommendations and imposes any sentence
18 up to the statutory maximum sentence, you cannot for that
19 reason withdraw your guilty plea. You in fact would remain
20 bound by it. I know we touched on that earlier. But do you
21 understand that very important point?

22 THE DEFENDANT: Yes.

23 THE COURT: And that no one, not, not Mr. Stella, not
24 Mr. Stroba, not me can make any kind of binding prediction
25 about what sentence Judge Neff will ultimately impose.

1 THE DEFENDANT: I understand.

2 THE COURT: Any other portions of the plea agreement
3 you think are important to note on the record, Mr. Stella?

4 MR. STELLA: No, Your Honor. Thank you.

5 THE COURT: Mr. Stroba.

6 MR. STROBA: No, Your Honor, nothing in the plea
7 agreement. Although, I would state for the record just so it's
8 clear, there are state charges pending against Mr. Kennedy.
9 Mr. Stella cannot bind the Attorney General who is prosecuting
10 those charges. I have explained that to Mr. Kennedy. We have
11 no understanding on how those charges will be resolved. I
12 don't represent him on those charges, of course. But there has
13 been some discussion about that, some discussion about what we
14 hope may happen in regard to those charges, but that is not
15 part of the plea agreement here. And Mr. Kennedy and I have
16 had a lengthy discussion about that.

17 THE COURT: Okay. Mr. Kennedy, do you understand what
18 Mr. Stroba just said?

19 THE DEFENDANT: I do.

20 THE COURT: Do you agree with what he just said?

21 THE DEFENDANT: Yes.

22 MR. STROBA: Nothing further, Your Honor.

23 THE COURT: Because he's right. I mean, you know,
24 Mr. Stella can't, who represents the United States of America,
25 can't bind the State of Michigan. So he couldn't, Mr. Stella

1 could not promise you that any state charges will be disposed
2 of in any way. Because he simply lacks the authority. Do you
3 understand that?

4 THE DEFENDANT: I do.

5 THE COURT: I will say this. And this is not intended
6 to suggest the outcome in your case. But it's not uncommon
7 when there are pending state charges and then the United States
8 brings charges based on the same conduct and obtains a
9 conviction, it's not unusual for the State of Michigan to
10 ultimately dismiss the state charges. But I have no idea.

11 THE DEFENDANT: I understand.

12 THE COURT: And you understand that can't be any part
13 of your decision today.

14 THE DEFENDANT: I understand.

15 THE COURT: All right. Mr. Kennedy, I find that your
16 plea of guilty here to Count 6 and 8 was made knowingly and
17 with full understanding of each of the rights that I explained
18 to you; that it was made voluntarily by you and free from any
19 force, threats, coercion, or promises other than those
20 contained in the written plea agreement; that you understand
21 the nature of the charges against you, the maximum penalties
22 for those charges, your constitutional rights, and that the
23 plea has a sufficient factual basis.

24 I'm going to defer acceptance of the plea agreement
25 itself to Judge Neff. I will author a recommendation, a report

1 and recommendation recommending acceptance of your plea,
2 adjudication of you guilty on Counts 6 and 8. A report and
3 recommendation will be forthcoming. The case is clearly not
4 appropriate for expedited sentencing.

5 I'm going to order the preparation of a presentence
6 investigation report. Your case will be assigned to a
7 probation officer. Probation officer will do an investigation,
8 an independent investigation, which will include interviewing
9 you at some length about lots of things like your childhood,
10 your upbringing, education, work history, health history,
11 family history, criminal history, if there is any. You'll be
12 asked to sign authorizations which will allow the probation
13 department access to reports, tax reports, employment, health,
14 lots of different things. The probation officer will pull all
15 of that information together and prepare a report for Judge
16 Neff painting a far more complete picture of who you are and
17 how you got to be where you are today. As part of that report,
18 the probation officer will calculate your sentencing
19 guidelines.

20 All of that will be disclosed both to Mr. Stroba and
21 to Mr. Stella at least a month before you're sentenced. You'll
22 have an opportunity -- I'm sure Mr. Stroba will sit down and go
23 through the report with you. Both sides will have an
24 opportunity to voice any objections they have to the report,
25 suggest any corrections, or changes. If there are unresolved

1 objections to the report at the time of sentencing, Judge Neff
2 will decide those.

3 Until then, I'm going to order you to continue in the
4 custody of the U.S. Marshal.

5 Mr. Stella, anything else from the government at this
6 time?

7 MR. STELLA: No. Thank you, Your Honor.

8 THE COURT: Mr. Stroba, how about you, sir?

9 MR. STROBA: No, Your Honor. Regarding the
10 presentence report, though, I would indicate that's already, we
11 have already got that process rolling. The probation officer
12 has been assigned and a proposed scheduling date for sentencing
13 is in the works.

14 THE COURT: Okay. Wonderful. Mr. Kennedy, did you
15 understand everything that happened in court today?

16 THE DEFENDANT: I did, Your Honor. Thank you for
17 explaining it.

18 THE COURT: You're welcome. Do you have any questions
19 for me before I adjourn your case?

20 THE DEFENDANT: I do not.

21 THE COURT: Well, we will be adjourned then. And good
22 luck to you, Mr. Kennedy.

23 THE DEFENDANT: Thank you for your time.

24 THE CLERK: All rise, please. Court is adjourned.

25 (Proceedings concluded, 3:40 p.m.)

C E R T I F I C A T E

I certify that the foregoing is a transcript from the Liberty Court Recording System digital recording of the proceedings in the above-entitled matter to the best of my ability.

/s/ Kathy J. Anderson

Kathy J. Anderson, RPR, FCRR

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